

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 162 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMBALAL S CHAUHAN & ORS.

Versus

MANHARBEN WD/O KANTIBHAI C PATEL

Appearance:

MR AM VOHRA for Petitioners

SERVED BY AFFIXING for Respondent No. 1

MR RA PATEL for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/12/97

ORAL JUDGEMENT

Learned advocate Mr. A.m.Vohra appearing for the petitioners is not present on call. It seems that the petitioners are not interested in prosecuting the matter further.

This petition arises of an order made by the

learned Gujarat Revenue Tribunal on Revision Application No. TN.B.A.1372/81, on 10th December, 1984, rejecting the petitioners' application for purchase of the land in question under section 32-P of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act"). The facts leading to the present petition are as under :

The petitioners before this court are the heirs of one Somabhai Chauhan. The predecessor of the said Somabhai Chauhan was a tenant of agricultural land bearing Survey No. 1812/4, admeasuring 24 Gunthas, situated in village Karamsad (hereinafter referred to as "the Land") . The said Somabhai Chauhan was, therefore, a "protected tenant". In the year 1964, proceeding under section 32-G was initiated. The said tenant, however, did not appear before the ALT & Mamlatdar or he was not willing to purchase the Land. Consequently, under the provisions contained in section 32-G (3) of the Tenancy Act, the purchase was declared to be ineffective. Entry to that effect was made in the Revenue Records on 8th December, 1965, which was sanctioned on 9th March, 1966. The respondent No.1, who was the original owner of the said land, applied for purchase of the said land to the Collector. Under provisions contained in section 32-P of the Tenancy Act, the said land was purchased by the respondent No.1 on 1st February, 1968. The purchaser being in possession of the land, an entry to that effect being Entry No. 12457 was made in the Revenue Records, which was sanctioned on 25th April, 1968. Upon perusal of the said Entry (Page-25 of the paper-book), it appears that the possession of the land was already with the purchaser and the question of transfer of possession did not arise. The petitioners thereafter on 3rd March, 1975 made an application under section 32-PP of the Tenancy Act for purchase of the land. The said application was rejected by the Agricultural Land Tribunal and Mamlatdar on 23rd September, 1976. Feeling aggrieved, the petitioners preferred appeal before the Deputy Collector being Tenancy Appeal No. 264/79, which too was dismissed on 29th August, 1981. Feeling aggrieved, the petitioners preferred a Revision Application before the learned Gujarat Revenue Tribunal referred to hereinabove, which was dismissed on 10th December, 1984. Feeling aggrieved, the petitioners have preferred this petition.

The petitioners have contended that inspite of the fact that purchase under section 32-G had become ineffective, the possession of the land remained with the petitioners. In support of their claim, they have relied upon several receipts for payment of price for water, the

licence issued to the Tobacco growers by the licensing authority, and an agreement dated 11th October, 1973. Both the authorities below and the Tribunal have come to the conclusion that the documents relied upon by the petitioners did not prove the possession of the petitioners of the Land even after the purchase had become ineffective as aforesaid. The licence issued to the petitioners is in respect of land bearing Survey No. 1812 and is not in respect of the Land. The receipts for payment of water charges do not refer to the identity of the land at all. The agreement dated 11th October, 1973 entered into by and between the petitioners and the land owner was in respect of watching the crop standing on the land as on the date. The claim of the petitioners that the agreement was taken under duress and undue influence, also is not believed by the authorities below and the Tribunal. Thus, there is no evidence which should substantiate the petitioners' claim of being in possession even after the purchase under section 32-G had become ineffective.

Therefore, the question that arises is whether after the purchase had become ineffective under section 32-G of the Act and after the Land had been disposed of under section 32-P of the Act and after the possession of the Land had been handed over to the purchaser under section 32-P, the petitioners could have availed of the right to purchase the land under section 32-PP of the Act. It is undisputed that the purchase having become ineffective, the Collector, under the powers vested into him under section 32-P of the Tenancy Act, had disposed of the land in the manner provided under section 32-P (2) of the Act. Section 32-PP empowers a tenant to apply for purchase of the land if any land has been at the disposal of the Collector under section 32-P of the Act on account of the purchase of the land by the tenant thereof having become ineffective under sub-section (3) of section 32-G, and the land so at the disposal of the Collector has not been disposed of in the manner provided in sub-section (2) of section 32-P of the Act. It is, therefore, evident that on the date of the application under section 32-PP by a tenant, the land should be available at the disposal of the Collector and the same should not have been disposed of by the Collector as provided in sub-section (2) of section 32-P of the Tenancy Act. Unless these two conditions precedent are satisfied, a tenant's application for purchase under section 32-PP can not be entertained. In the present case, it is established that on the date of the application made by the tenant i.e. on 3rd March, 1975, the land was not available for disposal by the Collector and the same was

disposed of by the Collector in the manner provided in sub-section (2) of section 32-P. Hence, in my view, the tenant i.e. the present petitioners have failed to satisfy the above referred two conditions precedent for their claim for purchase of the Land under section 32-PP of the Tenancy Act. The application for such purchase is, therefore, rightly rejected by both the authorities below which is rightly confirmed by the learned Tribunal.

Petition is, therefore, dismissed. Rule is discharged.

JOSHI